

TAX COURT OF NEW JERSEY



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**NOT FOR PUBLICATION WITHOUT THE APPROVAL OF
THE TAX COURT COMMITTEE ON OPINIONS**

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Via facsimile and regular mail

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**RE: MALTON, NADINE v. MORRISTOWN;
DOCKET NO.: 012305-2013**

This letter opinion constitutes the court's determination after trial of the appeal filed by the plaintiff, Nadine Malton ("Ms. Malton"), challenging the decision of the Morris County Board of Taxation ("Board") affirming the 2013 property tax assessment of her property located within the defendant municipality, Town of Morristown ("Morristown"), commonly known as 4 Green Hill Road, Morristown, Morris County, and designated by the taxing district as Block 4302, Lot 1 ("Subject Property"). This letter opinion also addresses Morristown's post trial Motion for Reconsideration of the court's order barring its expert report and any expert testimony for violating R. 8:6(b)(1)(ii).

For the reasons set forth herein, the court affirms the Board's judgment affirming the 2013 tax assessment for the Subject Property, and denies Morristown's Motion for Reconsideration.

The Subject Property contains a single-family dwelling with a gross living area of 2,812 square feet. The lot size is approximately .43 acre and is generally irregular in shape. The Subject Property is located in the R-3 (One Family Residential) zone. The Subject Property was originally assessed and affirmed by the Board as follows:

<u>2013</u>	<u>Original</u>	<u>Board</u>
Land	\$307,500	\$307,500
Improvements	\$241,200	\$241,200
Total	\$548,700	\$548,700

Ms. Malton offered the testimony of a professional real estate appraiser who was accepted by the court as an expert; the expert prepared an appraisal report that was admitted in evidence, also without objection. There were no other witnesses.

Upon motion filed on short notice before trial, Morristown was barred by the court’s order of July 20, 2015 from presenting any expert report or testimony. Morristown’s expert report was delivered to its adversary *less than* seven days prior to the peremptory trial date, in violation of R. 8:6(b)(1)(ii), which requires that expert reports are to be provided 20 days prior to the trial date for Small Claims track cases, and the court’s earlier scheduling order.¹ Accordingly, Morristown relied on the assessment.

According Ms. Malton’s expert, the Subject Property’s true value on the relevant valuation date was:

<u>Amount</u>	<u>Tax Year</u>	<u>Valuation Date</u>
\$475,000	2013	October 1, 2012

The expert concluded that the highest and best use of the Subject Property is its present use as a

¹ During argument on the motion, it was revealed that Morristown’s report was completed on April 17, 2015, just days after the originally scheduled production date of April 13, 2015, which coincided with the original trial date of May 13, 2015, and nearly 90 days before the actual trial date of July 20, 2015. The court could find no plausible reason for Morristown’s delay other than to attempt to gain a tactical advantage over its adversary.

single-family dwelling which is permitted in the R-3 zone.

The expert relied only on the Sales Comparison Approach to value, concluding it is the most appropriate approach to determine the value of the Subject Property. He identified six sales he concluded were comparable to the Subject Property; all six properties are located within Morristown. According to the expert, he submitted “*non-usable* sales within the sales Comparison Approach. [However, a]fter careful analysis and consideration, said sales were deemed [by him] to meet all of the criteria of a usable sale.” Emphasis added. According to the expert, he “performed due diligence in obtaining and confirming all data [for each comparable] within the sales Comparison Approach. The terms of the financing for each comparable sale were investigated from public records available from the appraiser’s desktop.”

To these six properties, the expert made various adjustments for location, lot size, condition, number of bedrooms, number of bathrooms, gross living area, finished or partially finished basements, heating/cooling, car storage, and various amenities. His gross adjustments ranged from 14.7% to 23.3%.

Value

(1) Presumption of Validity

“Original assessments and judgments of county boards of taxation are entitled to a presumption of validity.” MSGW Real Estate Fund, LLC v Borough of Mountain Lakes, 18 N.J. Tax 364, 373 (Tax 1998). The presumption attaches to the quantum of the tax assessment. Based on this presumption, the appealing taxpayer has the burden of proving that the assessment is erroneous. Pantasote Co. v. City of Passaic, 100 N.J. 408, 413 (1985) (citing Riverview Gardens v. North Arlington Borough, 9 N.J. 167, 174 (1952)). The presumption is not simply an evidentiary presumption serving only as a mechanism to allocate the burden of proof. It is, rather, a construct

that expresses the view that in tax matters, it is to be presumed that governmental authority has been exercised correctly and in accordance with law. MSGW Real Estate Fund, LLC, supra, 18 N.J. Tax at 374 (citing Powder Mill, I Assocs. v. Hamilton Township, 3 N.J. Tax 439 (Tax 1981)). The presumption of correctness stands, until sufficient competent evidence to the contrary is adduced. Little Egg Harbor Township v. Bonsangue, 316 N.J. Super. 271, 285-86 (App. Div. 1998).

A taxpayer can only rebut the presumption by introducing cogent evidence of true value. The evidence must be definite, positive and certain in quality and quantity to overcome the presumption, Aetna Life Ins. Co. v. Newark City, 10 N.J. 99, 105 (1952), and “must be ‘sufficient to determine the value of the property under appeal, thereby establishing the existence of a debatable question as to the correctness of the assessment.’” W. Colonial Enters., LLC v. City of East Orange, 20 N.J. Tax 576, 579 (Tax 2003) (quoting Lenal Props., Inc. v. City of Jersey City, 18 N.J. Tax 405, 408 (Tax 1999), aff’d, 18 N.J. Tax 658 (App. Div. 2000), certif. denied, 165 N.J. 488 (2000)).

Therefore, at the close of plaintiffs proofs, the court must be presented with evidence which raises a debatable question as to the validity of the assessment. MSGW Real Estate Fund, LLC, supra, 18 N.J. Tax at 376.

(2) Approach to Value

With regard to the expert’s Sales Comparison Approach, the court is not persuaded by his conclusion of value utilizing “non-useable sales.” The standard when an expert utilizes such an approach was succinctly and clearly set forth by my colleague Judge Novin in his May 6, 2015 letter opinion in the matter of Charles Simmons v. Roselle Borough, Docket No. 015570-2013, which this court now incorporates herein and adopts as its own:

[Some of the expert's comparable sales] were identified by the taxing district's assessor as non-usable for purposes of the Director of the Division of Taxation's annual assessment-sales ratio study.

A transaction classified as non-usable may be considered "if after full investigation it clearly appears that the transaction was a sale between a willing buyer, not compelled to buy, and a willing seller, not compelled to sell, and that it meets all other requisites of a usable sale." N.J.A.C. 18:12-1.1(b). See Pepperidge Tree Realty Corp. v. Kinnelon Borough, 21 N.J. Tax 57, 67 (Tax 2003). Thus, although the regulation does not mandate exclusion of the sale as evidence of true market value, it causes the court to pause and consider the terms and conditions of the sale. The court is obligated to evaluate the terms of sale of each property offered as evidence of market value, to ascertain if the sale was influenced by other conditions. "It is for the court to appraise the circumstances surrounding a sale to determine if there were special factors which affected the sale price without affecting the true value." Glen Wall Associates v. Township of Wall, 99 N.J. 265, 282 (1985). See Whippany Assoc. v. Hanover Township, 1 N.J. Tax 325, 330 (Tax 1980)(concluding that a property's sale price was not a true indication of market value because after the bank foreclosed on the property, it was pressured to quickly sell the property to satisfy the mortgage loan); Ewing Township v. Suburban Square Associates, 7 N.J. Tax 263, 267 (Tax 1985)(concluding that the sale of a neighborhood shopping center was "not an arms-length transaction because of the circumstances surrounding the mortgage foreclosure and sale" of the property); American Cyanamid Co. v. Wayne Township, 17 N.J. Tax 542, 580 (App. Div. 2000)(concluding that the sale of property was not indicative of true value because it was marketed for a limited period of time, in a limited manner and with no formal marketing plan); AT&T Corp. v. Township of Morris, 19 N.J. Tax 319, 324 (Tax 2000)(concluding that the purchaser was "clearly motivated by business, rather than real estate considerations," because the underlying purpose of the transaction was to afford the purchaser with an opportunity to defer capital gains tax from a previous sale).

Although the expert provided testimony that the comparable property sales were "verified through njactb.org, the realtor and the garden state mls" the expert offered no testimony or evidence detailing the length of time which [the sales] were marketed. The expert did not provide the court with any data or information supporting the exposure of [the sales] to the marketplace. . . . Moreover, the expert did not furnish the court with any evidence of the conditions of sale (i.e., the motivations of the sellers or buyers), and whether any relationship existed between the purchasers and the

sellers. Hence, the court is unable to gauge if comparable sale one and comparable sale three were arms-length, bona fide sales, and an indicator of true market value.

The court finds that, in the present matter, the expert's reliance on questionable internet databases in an effort to defeat the prior determination of the usability of the sales he chose, is not convincing and fails to meet the taxpayer's burden under law. As in Charles Simmons, *supra*, the expert here also failed to provide the *reliable* particulars for each sale. Essentially, it comes down to the expert's word that the sales are useable, against the determination of the Municipal Assessor, and confirmed by the Director of the Division of Taxation ("Director"), that they are not.

Accordingly, the court finds that Ms. Malton failed to create a sufficient question regarding the validity of Subject Property's original assessments for the 2013 tax year. Ms. Malton has failed to produce sufficient evidence to overcome the presumption of validity afforded to the judgement of the Board affirming the original assessment of the Subject Property.

Reconsideration

Given the court's determination above, this issue of reconsideration of the court's ruling barring Morristown's expert and the expert's report is moot and is therefore denied.

Conclusion

The Judgment of the Board affirming the assessment is affirmed. Morristown's Motion for Reconsideration is denied and the court's Order to that regard is enclosed herewith. The Tax Court Clerk/Administrator is directed to issue judgment consistent with this letter opinion.

Very truly yours,

11 / Vito L. Bianco, J.T.C.

Hon. Vito L. Bianco, J.T.C.

VLB:tms